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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 17.09.2019

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MAC.APP. 444/2018

LIBERTY GENERAL INSURANCE LIMITED Appellant
Through: Ms. Prerna Mehta, Adv.

versus

VIKAS CHAUDHARY & ORS Respondents
Through: Mr. Manu Shahalia, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 444/2018 & CM APPL. 35707/2019

1. This appeal impugns the Award dated 18.01.2018 passed by the learned MACT in Suit No. 4845/2016, inter alia, on two grounds: (i) that the identity of the offending vehicle has not been established, and (ii) that the quantum awarded is erroneous. The claimant was injured in a motor vehicular accident near Jasola traffic signal, New Delhi at around 9.55 a.m. on 30.07.2016, while he was riding a motor-cycle. It is stated that some vehicle hit him from the rear side and fled from the place. It is the claimant's case that he was first taken to Sanjivani Hospital and thereafter to Apollo Hospital within a span of 20-25 minutes.

2. The FIR was registered on 02.08.2016 on the statement of the claimant. The Final Report filed by the police reveals that the FIR was registered on 30.07.2016; it records the statement of the claimant that when

the claimant reached the gate of sector – 7 SFS Society from the Kalindi Kunj side, a vehicle exited from the said gate at immense speed, it was being driven rashly and hit the claimant's motor-cycle. He fell down and lost consciousness; the driver of the offending vehicle, who had taken him to Sanjivani Hospital, left him there on the pretext that he had some important work. He was then taken to the Apollo Hospital by his family members where he was admitted. His family members told him that his motor-cycle was taken away, by his brother-in-law – Mr. Yogesh Sahni, to his residence. The report also records that the said motor-cycle was produced before the police on 07.08.2016. Subsequently on 25.08.2016, the offending vehicle was identified; on 10.09.2016 the offending vehicle was identified as DL3CCE 0189 on the basis of a statement of an eye-witness, Mr. Pramod Kumar.

3. According to the Investigation Report, Pramod Kumar happened to be standing at the site when the police visited the site on 02.08.2016 i.e. three days after the accident. It is another matter though that identity of the vehicle is not mentioned or even suggested in the FIR or in any of the complaint or communication on behalf of the complainant. It is odd that an absolute stranger, who was purportedly an eye-witness and who had witnessed the accident, did not think it worthwhile to intimate the police, and if he was otherwise concerned about the welfare of the injured, he would have rushed the injured to Apollo Hospital which was in immediate vicinity of the site of the accident. Instead, he kept quiet and did not intimate either the local police or any other person or authority. His presence at the site, and subsequently at the time when the police was inspecting the site three days later is far too suspicious for it to be co-

incidental or serendipitous. Interestingly, he did not appear before the Trial Court in the criminal proceedings and he was dropped from the list of witnesses on behalf of the prosecution. As a sequiter, the site plan of the accident which was prepared at his behest, would be inadmissible since it was never proven. The basis of the identification of the vehicle was the statement of the mysterious and elusive Pramod Kumar, who did not appear before the learned MACT either in the claim petition. Therefore, the identity of the offending vehicle is clearly in doubt.

4. The FIR was registered on 30.07.2016. It specifically notes that there was no eye-witness to the accident. Interestingly, the identity of the so called driver who had taken the claimant to Sanjivni Hospital is neither recorded nor any document has been produced to support the claimant's contention that he was first taken to Sanjivni Hospital, in an unconscious stage and then he was discharged and/ or taken away from there to another hospital viz. Apollo Hospital, despite medical advice to the contrary. The motor accident being a medico-legal case, it was incumbent upon the first medical care-giver i.e. Sanjivni Hospital, to have recorded the bringing-in of a motor vehicular accident victim in an unconscious stage. However, no record regarding the first medical care was brought on record.

5. According to the claimant, he was hit and injured by the offending vehicle being driven rashly and negligently at about 9.55 in the morning; he fell unconscious; he was rushed to Sanjivni Hospital, where he re-gained his consciousness; the said driver of the offending vehicle told him that he had some work to do and left the hospital; the family of the claimant was called; they rushed to Sanjivni Hospital and took him to Apollo Hospital; his admission at the latter hospital is recorded at 10.20 a.m.. All this is stated to

have happened within a mere 20-25 minutes during rush hour. It is wholly implausible because it is not mentioned where and how far Sanjivni Hospital was from the site of the accident; it is logical that when a person regains consciousness after an accident, it takes the person some time to regain his wits, assess his circumstances and then either call his family members and/or request somebody to call them on his behalf; after receiving such information the family members, wherever they may be, would have taken some time to rush to Sanjivni Hospital; and from there getting the claimant/victim discharged would have taken some time; then rushing him from Sanjivni Hospital, wherever it may be, to Apollo Hospital would also have taken some time, all this could not have happened in a span of mere 20-25 minutes. The claimant has clearly pleaded an implausible case and has not been able to prove anything apropos the case.

6. What emerges from the preceding discussion is that the claimant has been unable to prove the identity of the offending vehicle, let alone it being driven in a rash and negligent manner, resulting in injuries being caused to him. In the circumstances, no case is made out for any liability to be fixed on the appellant - insurer of the vehicle. The impugned order is set aside. The appeal is allowed.

7. The statutory amount be refunded to the appellant along with interest accrued thereon.

NAJMI WAZIRI, J

SEPTEMBER 17, 2019/_{kk}